



STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
ACTING DIRECTOR

BOARD OF PESTICIDES CONTROL

February 16, 2007
Colby Thomas Rooms, Hampton Inn
425 Kennedy Memorial Drive, Waterville
(Exit 127 from I-95)

MINUTES

9:30 A.M.

Present: Stevenson, Jemison, Eckert, Qualey, Humphreys and Walton

1. Introductions of Board and Staff

☒ Board members, staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the January 26, 2007 Board Meeting

Presentation By: Henry Jennings
Acting Director

Action Needed: Amend and/or approve

☒ Jemison/Stevenson: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Section 18 Emergency Registration Renewal Request for Coumaphos to Control Varroa Mites and Small Hive Beetles in Managed Honey Bee Colonies

The Division of Plant Industry in the Maine Department of Agriculture, Food & Rural Resources has again requested that the Board petition EPA for a FIFRA Section 18 specific exemption for use of coumaphos (CheckMite+) to control both Varroa Mites and Small Hive Beetles in managed bee colonies. Fluvalinate has been used to control Varroa Mites since 1987, but resistance started developing in 1997. In addition, Small Hive Beetles have spread into Maine and there is no product currently registered to control this pest. The State Apiarist points out that a healthy bee keeping industry is needed to support Maine agriculture, and that a regulatory control product is essential so that migratory bee operators may continue to service the various commodity groups in this state. The request is supported by the product manufacturer, Bayer Corporation, and their regulatory specialist points out they are continuing to pursue a full Section 3 Registration with EPA.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption Registration for Coumaphos for Use with Bees.

- ☒ Board members discussed declining bee populations and the causes. Anthony Jadcak, the State Apiarist, reported that bee populations have been in decline since 1987. He stated there is some concern that the bees are experiencing sublethal effects from exposure to the neonicotinoid class of insecticides that have been used extensively in agriculture over the last 15 years. Current research is inconclusive.

Jemison/Richardson: Moved and seconded approval to submit the Section 18 exemption request to EPA.

In Favor: Unanimous

4. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006 Board Meeting, members reviewed their prioritization balloting for discretionary tasks discussed at their 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board's number four priority. The Board reviewed a memorandum summarizing surface water data, other state requirements for buffer zones and an initial concept for a future rule at their January 26, 2007 meeting. Members were concerned that using DEP's definition of state waters may create a rule that is too broad. Consequently, the Board requested that the staff invite personnel from the DEP to their next meeting to discuss options for defining the surface waters to be protected.

Presentation By: DEP Staff

Action Needed: Continue Development of Buffer Zone Concepts

- ☒ Jeff Dennis from the Division of Watershed Management in the Maine Department of Environmental Protection went through a handout he had developed for the meeting. He reviewed a number of statutory definitions for various types of surface waters and suggested a possible definition for the Board's purpose that would include lakes and ponds (except man-made ponds less than 30 acres), permanent and intermittent natural streams, and the most significant wetlands. It would not include small, isolated wetlands, man-made channels, ditches, swales and other man-made conveyances, and most man-made ponds.

Dennis also discussed some other issues the Board may want to consider in developing a buffer scheme for surface waters. He pointed out that the smallest water bodies are most sensitive to detrimental impacts from contamination because dilution is far less than larger water bodies.

Dennis also reviewed a couple of points about the purpose of the buffers and how effective they are likely to be. He stated Riparian Buffers (essentially what the Board has discussed) are located adjacent to the water body and provide a variety of habitat-related benefits. Stormwater Treatment Buffers are located adjacent to the source of the stormwater and are designed to filter and infiltrate stormwater. Dennis pointed out that sheet flow across the buffer is more conducive to treatment

than channelized flow. He further stated that if the goal of the buffers is to prevent contaminated runoff, then treatment buffers are more effective. He conceded that would be far more difficult to implement in relation to pesticide applications.

A discussion ensued about how a buffer requirement might affect right-of-way spraying such as along railroads and roads. The Maine Department of Transportation devotes considerable effort in minimizing the likelihood of runoff and drift to surface waters. Board members felt they could craft regulatory language that would provide sufficient flexibility for right-of-way spraying.

Consensus was reached to direct the staff to further develop regulatory language with the definition suggested by Dennis and to include an exemption for public health spraying for consideration at a future meeting.

5. Adoption of Housekeeping Amendments to Chapters 10, 20, 21, 27, 28 and 31

A public hearing was held on November 17, 2006, on a series of minor housekeeping amendments to eight different rule chapters. Four people testified at the public hearing and 13 written comments were received prior to the December 1, 2006 deadline. The Board reviewed the rulemaking record at their December 15, 2006 meeting and asked the staff to make minor revisions to a couple of the proposed amendments based on the rulemaking record. The Board reviewed the minor changes at their January 26, 2007 meeting and voted to move forward with the final adoption of changes to Chapters 10, 20, 21, 27, 28 and 31 at the February meeting. Members determined they would not adopt the proposed changes to Chapter 40 and 41 relating to the use of trichlorfon.

Presentation By: Henry Jennings
Acting Director

Action Needed: Adoption of Amended Rules, Basis Statement and Response to Comments

- ☒ Jennings stated that the Board should make separate votes for each chapter and that it needed to approve the rule, the basis statement, and the summary of comments to adopt a rule amendment. He suggested the Board address the proposed amendments in numerical order by chapter number.

Chapter 10 contained the new language clarifying that a commercial applicator's license is needed to treat standing utility poles.

Humphreys/Jemison: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

Jennings reminded members that the proposed amendments to Chapter 20 involve the addition of requirements designed to insure that all commercial applications of pesticides are made with the knowledge and consent of the landowner or legal occupant. This amendment received the most comments and was modified based on the comments.

Humphreys/Jemison: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

The proposed amendment to Chapter 21 was to simply correct an outdated phone number. No comments were received.

Jemison/Humphreys: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

The proposed amendment to Chapter 27 involved the addition of a new exemption from the notification requirements when arbovirus-positive animals are detected in the vicinity. One commenter opposed the change based on the idea that it would discourage the use of IPM. The Board felt the risks associated with arbovirus-borne encephalitis outweighed the risks associated with pesticide applications without advance notice.

Jemison/Qualey: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

The proposed amendments to Chapter 28 related to a provision allowing a spray abutter to request an MSDS and adding a provision for an economic hardship waiver to be included on the Board's Pesticide Notification Registry. Comments were received both in support and opposition to both changes. The Board determined that both changes were reasonable and should not create hardships for pesticide applicators.

Humphreys/Jemison: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

The proposed amendments to Chapter 31 involved consolidation of some of the licensing categories to streamline the study manuals and exams. A longstanding Board policy of requiring a commercial license for operators of sewerage and water treatment plants was also incorporated. Four people opposed combining the limited commercial blueberry subcategory with the ag plant category. The Board agreed to amend the proposal to leave the limited commercial blueberry category separate.

Jemison/Stevenson: Moved and seconded adoption of the rule, basis statement and summary of comments.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with JDB Inc. of Brewer

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a

willingness to pay a fine and resolve the matter. In this case, a company applicator misread the address on the work order and started applying broadleaf weed control to the wrong property. The property owner observed the application and rushed out to stop the application. Application of pesticides without the authorization of the property owner is considered use of a pesticide in a careless, faulty or negligent manner.

Presentation By: Raymond Connors
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Connors briefly outlined the circumstances of the case involving application of pesticides at the wrong address. Board members expressed disappointment that commercial applicators continue to apply pesticides at the wrong address despite the attention the Board has devoted to the issue. Some members expressed the view that the fine should be higher. Members reached consensus and directed the staff to inform applicators the Board will not tolerate further negligence in this regard.

Humphreys/Walton: Moved and seconded approval of the consent agreement

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with the Causeway Club Golf Course of Southwest Harbor

This case is similar to the preceding agenda topic where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved an employee of the club applying pesticides at the course during 2006. Golf courses are considered a place open to use by the public, which may only be sprayed by licensed commercial applicators. At the time of the applications, no person from the course was licensed as a commercial applicator. These actions constitute a violation of the Board's statute requiring that a licensed applicator be present whenever commercial applications are conducted.

Presentation By: Raymond Connors
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Connors again summarized the case involving an unlicensed application of pesticides at a golf course. It was the second time this violation had occurred at the course within a four year period. The proposed penalty had been adjusted to take this into account.

Jemison/Qualey: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

8. Other Old or New Business

a. Legislative Update H. Jennings

- ☒ Jennings informed the Board that the Agriculture, Conservation & Forestry Committee (ACF) and the Marine Resources Committee had reviewed the browntail moth report on January 24, 2007. Both committees were quite supportive of the findings and appeared to buy into the recommendations. The only issue that arose was that some legislators wondered why there were no recommendations to continue monitoring. The committees suggested that different types of monitoring be added to the emergency bill.

The ACF then reviewed the Board's regulatory agenda. It appears they will submit legislation to make most of the Board's major or controversial rulemaking major substantive, requiring legislative approval.

Jennings reported that the ACF will hear testimony on LD 406 relating to aerial spraying on either February 26 or March 5. He stated that Board members appeared somewhat divided on whether to oppose the bill or testify neither for nor against. Jennings suggested the Board attempt to reach consensus and offer their thoughts on key points to be included in the testimony. Consensus was to testify against the bill and focus on the fact the Board already had two committees working on the issue.

Jennings stated he and Deputy Commissioner Porter had discussed the pending bill sponsored by the New England Pest Management Association with Gene Harrington of the National Pest Management Association and Chris O'Neil who represents the New England Association. The bill would seek to rewrite the notification provisions for indoor pesticide applications. Jennings stated most of the concern relates to posting signs at businesses and institutions. A short discussion took place about the true nature of the problem and whether there may be an alternative approach that would be acceptable to the Board and the structural applicators. No consensus was reached so the Board decided to let the process play out in the legislature.

b. YardScaping Update G. Fish

- ☒ Fish stated that raising funds to get the project underway was the primary holdup at this point. About \$8,300 had been committed so far. He estimates that \$50,000 will be necessary to get the trails built so the project can proceed. Fish has asked Assistant Attorney General Randlett to review the propriety of BPC staff members being involved in fund raising activities. Board members discussed fund raising and suggested a number of foundations that might support the project

c. Other ?

- ☒ Hicks informed the Board that Michael Lavoie had resigned from both the technical committee and the stakeholders committee, as he is retiring. Lavoie has suggested that Mathew Carmichael take his place on both. Carmichael is the only fixed wing applicator residing in Maine. The Board agreed to assign Carmichael to both committees.

9. Schedule and Location of Future Meetings

March 16, 2007 in Waterville; April 13, 2007 and May 18, 2007 are the tentative dates for the next Board meetings and/or a planning session.

Adjustments and/or Additional Dates?

☒ The Board decided to change the date of the May meeting from the 18th to the 11th. They also added a meeting date of June 22nd and decided to hold its annual planning session at the end of October.

10. Adjourn

☒ Humphreys/Jemison: Moved and seconded that the meeting adjourn.

In Favor: Unanimous

The meeting adjourned at 12:38 p.m.

Respectfully submitted by Henry Jennings, Acting Director